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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,482	03/02/2004	Lester R. Greer JR.	P214529	1890

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SCHACHT LAW OFFICE, INC.
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EXAMINER

LAVINDER, JACK W

ART UNIT PAPER NUMBER

3677

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,482

Applicant(s)

GREER ET AL.

Examiner

Jack W. Lavinder

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on 11/26/04 disclaiming the terminal portion of any patent granted on this application that would extend beyond the expiration date of US Patent 6698071 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 7-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hawie, 3049782.

Regarding claim 1, Hawie discloses a resilient (see figure 5, i.e., the finger member 15 moves from an opening dotted line position to a closed solid line position) clip member (figure 1) defining

- a hinge (13, figure 5) with first (14) and second (15) finger portions extending therefrom
- a ratchet portion (29) formed on at least one of the finger portions
- a collar member (12) having
 - a latch portion (28)
 - a lever portion (12a)

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- a latch opening (opening which allows the latch element 28 to extend through the outer circumferential wall of the sleeve, see figure 1)
- a housing interior, i.e., the interior portion, which receives the finger portions (14, 15)

The rest of the language in claim 1 is directed to the functions of the different parts of the clip, hinge, ratchet portion and collar member. All of these functions can be performed by the structure disclosed in Hawie's clip.

Hawie's clip is made from a resilient metal material (col. 1, line 62 and column 2, lines 50-55). The claim states the function of applying a force to the lever portion. This force causes the collar member to deform from a normally engaged configuration to a disengaged configuration. When force, in Hawie, is applied to the lever portion (12a), the sleeve starts sliding to the right in figure 5. As it slides to the right the tongue portion of the collar member is deformed in the upward direction to disengage from the hole 29.

The claim also states that the collar member has two positions, which correspond to an open and closed position of the clip member. Hawie's clip performs these functions in the same way as applicant's invention (see figure 5).

The claim states in the second to last paragraph: "the latch portion engages the ratchet portion to allow movement of the collar member towards the second position and inhibit movement of the collar member towards the first position". Hawie's device is capable of and does perform this function. The tongue/latch (28) engages the ratchet

portion (29) allowing movement of the collar member towards the second closed position, i.e., as seen from the drawings there is space between the latch and the hole that would allow the collar to move toward the closed position even after the latch is engaged within the hole. Also, the natural resiliency of the tongue/latch and collar inhibits the movement of the collar toward the first opened position when the tongue is engaged in the hole, i.e., a force is required to be applied to the lever (12a) in order to move the collar toward the first open position.

The claim states in the last paragraph that the collar member, when in the disengaged configuration, may move between the first and second positions. Clearly, once the tongue is disengaged from the hole (29), the collar can be freely moved along and down the finger portion 15 and along and up finger portion 15.

Regarding claim 2, Hawie discloses a collar having a belt portion, i.e., the circumferential sidewall surrounding the finger portions, and first and second gripping portions (16, 18).

Regarding claim 3, Hawie discloses a clip having a line notch, i.e., the notch/gap between the first gripping teeth (17) and the second gripping teeth (19) as seen in figure 5. Or a different interpretation would be a line notch formed between the second gripping teeth (19) and the ramp portion starting at 25 of finger portion 15. That whole area would be considered a line notch. Or a third interpretation would be a line notch defined between the top finger portion 15 and the bottom finger portion 14 at 25.

Regarding claim 4, Hawie discloses first and second gripping portions (16, 18, figure 4) wherein at least one of the gripping portions (18) defines a notch as stated in

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the previous paragraph. Hawie also discloses a line tooth, i.e., the teeth 19 are in a line projecting from the finger 15, which is capable of engaging the edge line of a sheet of material (figure 5).

Regarding claim 7, Hawie discloses first and second gripping portions having first and second sets of curved gripping teeth (17, 19) capable of gripping a sheet material.

Regarding claims 8-10, 12 and 13, Hawie discloses that the clip is used for gripping portions of clothes together (col. 1, lines 13-16). Clothes are considered to be sheet materials. Assuming that applicant doesn't agree that clothing can be considered to be sheet materials, the recitation in the preamble "of gripping sheet materials" is considered merely an intended use of the method steps. There is nothing in the body of the claim that refers back to the preamble intended use recitation for meaning. The preamble does not breathe life and meaning into the claim. Thus, Hawie's clip as discussed above, meets all the method limitations outlined in the claim.

Regarding claim 11, Hawie discloses a clip having a line notch, i.e., the notch/gap between the first gripping teeth (17) and the second gripping teeth (19) as seen in figure 5. Or a different interpretation would be a line notch formed between the second gripping teeth (19) and the ramp portion starting at 25 of finger portion 15. That whole area would be considered a line notch. Or a third interpretation would be a line notch defined between the top finger portion 15 and the bottom finger portion 14 at 25.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. In claim 4, it is not clear how the first and second gripping portions define a single tooth?

Allowable Subject Matter

7. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

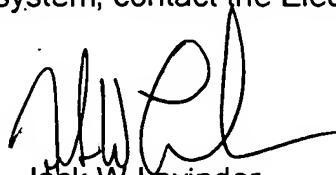
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 703-308-3421. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack W Lavinder
Primary Examiner
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2/14/05